In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-155

PATRICK J. DORAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the government failed to comply with a court order for a bill of particulars.

After a jury trial in the United States District Court for the District of New Jersey, petitioner was convicted of five counts of extortion in violation of 18 U.S.C. 1951 (Hobbs Act).[1] He was given concurrent five-year prison sentences and fined $10,000 on each count. The court of appeals affirmed without opinion (Pet. App.).

It was shown at trial that petitioner, in his capacity as Atlantic County Engineer between 1965 and 1971, extorted money from various road construction and engineering firms in return for awarding them contracts with the county. At trial, petitioner did not deny receiving

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[1] A co-defendant, whose case was severed before trial, subsequently pleaded guilty.

any of the extortion payments (Tr. 1075-1077, 1084-1085, 1097, 1107-1108); rather, he asserted that they were political contributions which he turned over to a local political organization.[2]

Petitioner claims that he was denied due process by the failure of the prosecution to make available to him the diaries of one of the extortion victims (Kammerer) until the day before trial commenced and the memo books of another victim (Continisio) until just prior to his testimony. He also alleges that these failures were so improper as to warrant reversal regardless of whether he was prejudiced (Pet. 5). There is no merit to these contentions.

After a hearing on a defense motion for a bill of particulars, the district court ordered the government to identify more specifically the time during which the extortion took place[3] and to disclose all documents which it intended to use at trial. It further directed that any documents the government later decided to use should be turned over as soon as possible (Tr. of Nov. 13, pp. 30-31). Pursuant to this order, the government provided petitioner with approximately 300 documents; it later turned over another 150 documents and the petitioner's grand jury testimony. The government also identified the months between 1967 and 1971 during

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[2] On cross examination, petitioner was unable to describe the structure of the organization or identify its membership (Tr. 1167-1187). Moreover, during the period 1965-1971, petitioner's net worth increased from $28,000 to $156,000, although his legitimate income was only $14,000 a year (Tr. 1195-1196).

[3] The government was directed "to have the gap narrowed down from a four-year spread * * * to one of months or weeks, if you have that information, and without prejudicing your case" (Tr. of Nov. 13, p. 30).

which the prosecution intended to prove petitioner's receipt of extortion payments (*id.* at 31).

Just prior to trial, the prosecution decided to introduce Kammerer's diaries for 1967 and 1971 in addition to his testimony. Petitioner's counsel was notified of this, and these diaries, as well as those for 1968, 1969, and 1970, were disclosed to him before trial.[4] During the trial, the prosecution decided to introduce some memo books of the witness Continisio, which were written in a code decipherable only by the witness. The court rejected petitioner's objection to their introduction without more notice, because the memos were not lengthy and ample time was afforded for the defense to examine them (Tr. 749-750).

Thus, the prosecution complied fully with the court's orders. It specified the time during which the offenses occurred by identifying the particular months involved, and it disclosed to petitioner each document it intended to use at trial promptly when the decision to use it was made.

Although petitioner alleges that he was denied due process because the prosecution failed to show him the documents earlier, he apparently does not contend that he was prejudiced by this failure (Pet. 5-6). In any event, it is clear that no prejudice occurred and that there was no denial of due process.

Petitioner did not deny receipt of the payments. Instead, he freely admitted taking the funds as charged, but defended on the grounds that he was acting as a conduit for political contributions. The precise dates

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[4] Petitioner reviewed the diaries in the United States Attorney's office the night before trial (Tr. 53).

on which he received the funds were thus not in issue and were evidently as well known to petitioner as to the prosecution.

Moreover, the assertion that petitioner was unaware before trial commenced of the dates of the charged extortion payments is refuted by the record. The government had disclosed to him the months during which it contended the extortion payments had been made. In addition, many dated checks issued by the construction firms involved were included in the 450 documents previously provided petitioner (Tr. 608, 612, 645, 767-770, 897-901). Finally, the record shows that petitioner's counsel had possession of petitioner's own date book, which could have provided ample basis for establishing any alibi or denial of receipt were such a defense feasible (Tr. of Nov. 13, p. 19). We also note that petitioner's attorney demonstrated that he was not surprised by the government's decision to use Kammerer's 1967 and 1971 diaries; he spent considerable time cross-examining Kammerer not only on these two records, but also upon his 1968, 1969, and 1970 diaries, which were introduced as defense exhibits (Tr. 367-378, 385-480). The witness Continisio was similarly cross-examined concerning his memo books (Tr. 851-855).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1973.

DOJ-1973-09